

MACOMB COUNTY PROBATE COURT

PROCEDURAL OVERVIEW OF CASE EVALUATION

I. INTRODUCTION – SCOPE AND APPLICABILITY

A. How is a case ordered to case evaluation?

1. Typically done on the Court's own motion as part of the pretrial process and usually ordered after the close of discovery. MCR 2.403(B)(1)(c).
2. A party can also request case evaluation. MCR 2.403(B)(1)(a),(b).

B. Issues which may be submitted to case evaluation

1. The Court can submit to case evaluation one or more requests for relief in any contested proceeding. MCR 5.143.
2. Issues which may be ordered to case evaluation include the following:
 - a. Claims
 - b. Attorney or fiduciary fee disputes
 - c. Objections to accountings
 - d. Will contests (i.e., the value of the objections to admission of a will to probate)
 - e. Disputes over title to assets (i.e., bank accounts, stocks, real estate, etc.)
 - f. Pretermitted heir allegations
 - g. Additional matters at the discretion of the Court.
 - h. Civil Actions

C. Case Evaluation Fees

1. Note: All fees must be made payable jointly to each member of the case evaluation panel. MCR 2.403(H)(1).
2. All fees must be paid prior to hearing. Parties will not be allowed to file their summaries if they have not yet paid their fees. Unless all of a party's fees have been paid, they will not be allowed to participate in the case evaluation hearing or have their summaries reviewed by the case evaluators.

3. Case Evaluation Fee Schedule
 - a. \$75.00 filing fee for each party. MCR 2.403(H)(1).
 - b. \$150.00 late filing fee for any party who does not submit their summary and exhibits at least 14 days prior to the hearing date to the ADR Clerk and serve copies on each attorney of record. MCR 2.403(I)(2).
 - c. \$150.00 adjournment fee, payable by the party seeking adjournment, for any case evaluation hearing adjourned less than 30 days prior to the hearing. No fee if parties submit settlement order prior to hearing date. MCR 2.403(H)(5).
 - d. \$50.00 cancellation fee, imposed on each party for failure to inform the Court within two (2) weeks of the hearing date that case evaluation will not be held. No fee if case settles and the Court is informed before the hearing.
4. All fee payments will be held by the Court. If a case has been cancelled by way of settlement, dismissal, or entry of judgment disposing of the action within the time limits set forth above, the filing fee will be refunded to the party or parties who submitted a filing fee. MCR 2.403(H)(5).

II. STEP 2 – SELECTION OF CASE EVALUATION PANEL/HEARING SCHEDULES

- A. When 8–10 cases have been ordered to case evaluation, the Court will schedule a case evaluation hearing docket.
- B. Hearings are usually conducted on the last Thursday of the month and typically begin at 9:00 a.m. Cases are usually scheduled at 30 minute intervals. MCR 2.403(J)(3).

Note: Cases which are particularly complex may be scheduled for a one hour block of time. The Court will attempt to set the most difficult cases at the beginning of the case evaluation docket. MCR 2.403(J)(3).

- C. Case evaluators will be contacted by the Court at least 42 days before the case evaluation hearing date to confirm their availability. MCR 2.403(G)(1).
- D. If any member of a panel is unable to attend on the scheduled date, a different panel or alternate attorney from the case evaluation pool will be utilized.
- E. If there is a conflict between one or more of the case evaluators and any party whose case is scheduled for case evaluation, the case in question will be handled by a different panel. A conflict would include representation by a case evaluator or another member or the case evaluator's firm in a case scheduled to be heard by the case evaluator's panel. MCR 2.003; MCR 2.403(E).

III. STEP 2 – DISTRIBUTION OF CASE EVALUATION DOCKET

- A. Each member of the case evaluation panel will be sent a cover letter confirming the date of the case evaluation along with a docket sheet. This correspondence will request that the case evaluator inform the Court if he or she has a conflict which would prevent them from hearing any cases on the docket.
- B. The docket sheet may be subject to revision due to case being adjourned or settled prior to the hearing date. A revised docket sheet will be mailed to case evaluators approximately 2 weeks before the scheduled hearings. A final docket sheet will be distributed them on the hearing date.

IV. STEP 3 – CASE EVALUATION SUMMARY REVIEW

- A. Summaries and exhibits will not be mailed to case evaluators. Panelists must come in and pick up their copies.
- B. Each panelist will have a manila envelope or red rope folder which contains their copies of the summaries and exhibits. These materials will be in the ADR Clerk's/Court Attorney's office.
- C. Case evaluators usually check periodically over the 2 weeks preceding the hearing date to see if summaries and exhibits have been filed for their review.

V. STEP 4 – PREHEARING PROCESS

- A. The panel chairperson will be given all the checks received from the parties. The chairperson is responsible for distribution of the fees among the panelists.
- B. On the day of the hearings, the panel chairperson will also be given a blank evaluation form for each case scheduled for hearing on the docket

VI. STEP 5 – CASE EVALUATION HEARING

- A. Case evaluation hearings are conducted in the large conference room of the Macomb County Probate Court, 21850 Dunham Road, Mt. Clemens, Michigan.
- B. Case evaluators typically arrive early on the hearing date to review the summaries and exhibits, and check to see if any materials have been filed at the last minute.
- C. Ex Parte Communications by Case Evaluators

1. MCR 2.403(J)(5) states:

Counsel or the parties may not engage in ex parte communications with the case evaluators concerning the action prior to the hearing. After the evaluation, the case evaluators need not respond to inquires by the parties or counsel regarding the proceedings or the evaluation.

2. This section is designed to prevent a party in case evaluation from gaining an unfair advantage. It will also help alleviate situations in which parties attending case evaluation could misconstrue an attorney's discussion with one or more case evaluators. This prohibition against ex parte communication between attorneys and case evaluators concerning the action prior to the hearing will prevent any appearance of impropriety. Violation of this prohibition against ex parte communications may result in the removal of the case evaluator.

VII. STEP 6 – CASE EVALUATIONS

- A. The written case evaluation (SCAO forms MC 32 and MC 32/2) is completed by the case evaluators at the conclusion of the hearing. A copy of this evaluation is presented to each party immediately after the case evaluation hearing.
- B. It is the case evaluation chairperson's responsibility to ensure completion and distribution of the evaluation form at the conclusion of each hearing.
- C. The chairperson must return all original evaluation forms to the ADR Clerk/Court Attorney.
- D. Pursuant to MCR 2/403(L)(1), the parties must now accept or reject the entire evaluation, even if there are separate awards on multiple claims. There is no longer any mechanism for the bifurcation of a case evaluation award. Example: In an attorney and fiduciary fee dispute, a party could not accept the evaluation of one of these fees and reject the other.

VIII. STEP 7 – POST CASE EVALUATION PROCEDURE

- A. If all parties to an action accept the evaluation, the Court will put them on a Notice to File an Order pursuant to the acceptance of Case Evaluation either by Consent or by 7 Day Rule. MCR 2.403(M).
- B. If one or more parties to an action reject the evaluation, the Court will schedule the case for trial in the normal fashion. MCR 2.403(N).

CASE EVALUATION CONTACT PERSON

Charles A. Semarjian, Court Attorney/ADR Clerk. Phone: (586) 469-5290. Copies of the Macomb County Probate Court's ADR plan are available upon request. MCR 2.410(B)(1).